

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAMES H. FISCHER,

Plaintiff,

v.

STEPHEN T. FORREST, Jr., SANDRA F.  
FORREST, SHANE R. GEBAUER and  
BRUSHY MOUNTAIN BEE FARM, INC.

Defendants.

CIVIL ACTION NO.: 14-CV-1304  
14-CV-1307

**MEMORANDUM OF LAW IN**  
**SUPPORT NOTICE OF STEPHEN T.**  
**FORREST, JR., SANDRA F. FORREST,**  
**SHANE R. GEBAUER, AND BRUSHY**  
**MOUNTAIN BEE FARM, INC.'S**  
**MOTION TO STRIKE**

---

**I. ARGUMENT**

This Court granted Stephen T. Forrest, Jr., Sandra F. Forrest, Shane R. Gebauer, and Brushy Mountain Bee Farm, Inc.'s (collectively "Defendants") Motion For Summary Judgment in its entirety of February 16, 2018. At that time, the Court respectfully directed the Clerk of Court "to close this case." (1304 Dkt No. 197; 1037 Dkt No. 193). The Clerk's Judgment dated February 16, 2018 also stated "the case is closed." (1304 Dkt. No. 198; 1307 Dkt. No. 194).

On March 16, 2018, Plaintiff James H. Fischer ("Fischer") filed a 56(e)(1) Response To Defendants' 56.1 Statement Of Undisputed Material Facts (1304 Dkt. No. 204; 1307 Dkt. No. 200). Presumably, Fischer believes this Response is somehow related to his most recent Motion For Reconsideration. (1304 Dkt. No. 202; 1307 Dkt. No. 199), which seeks reversal of the Court's decision granting Defendants' Motion for Summary Judgment in its entirety.

However, Fischer's response has no relevance whatsoever to his Motion For Reconsideration. Defendants can only speculate that Fischer intends to somehow use this Response in a subsequent Second Circuit appeal. The case is closed and the record on appeal is also closed. The Response is completely irrelevant to any issue remaining in this case and should not be a part of this cases record.

## **II. CONCLUSION**

For the reasons set forth herein, Defendants respectfully request that the Court grant its Motion To Strike Fischer's Response to Defendants' 56.1 Statement Facts (1304 Dkt. No. 204; 1307 Dkt. No. 200).

Dated: March 30th, 2018

CLEMENTS BERNARD, PLLC  
*Attorneys for Defendant*

By: /s/ Seth L. Hudson  
Seth L. Hudson (*Admitted Pro Hac Vice*)  
4500 Cameron Valley Parkway Suite 350  
Charlotte, NC 28211  
Phone: (704) 790-3600  
Fax: (704) 366-9744  
shudson@worldpatents.com

– and –

Daniel K. Cahn, Esq. (DC9791)  
Law Offices of Cahn & Cahn, P.C.  
105 Maxess Road, Suite 124  
Melville, NY 11747  
Phone: (631) 752-1600  
Fax: (631) 574-4401

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **Defendant's Stephen T. Forrest, Jr., Sandra F. Forrest, Shane R. Gebauer, and Brushy Mountain Bee Farm, Inc.'s Memorandum in Support of Defendants' Motion To Strike** was electronically filed with the Clerk of Court using the ECF system, which will be served by operation of the Court's electronic filing system upon the following counsel of record and ECF participants.

Oscar Michelen  
200 Old Country Road  
Suite 2 South  
Mineola, NY 11501  
*Attorney for Plaintiff*

This the 30<sup>th</sup> day of March 2018

By: /s/ Seth L. Hudson  
Seth L. Hudson (Admitted Pro Hac Vice)  
4500 Cameron Valley Parkway, Suite 350  
Charlotte, NC 28211  
Phone: 704-790-3600  
Fax: 704-366-9744  
*(Attorney for Defendants)*